

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re Application of: Darrell Sleep

Confirmation No: 7594

Serial No.: 10/522,074

Group Art Unit: 1654

Filed: July 8, 2005

Examiner: Gudibande

For: Gene and Polypeptide Sequences

**REPLY BRIEF UNDER 37 C.F.R. §41.41**

MS Appeal Brief - Patents  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Dear Sir:

Appellants file this Reply Brief in response to the Examiner's answer of 22 December 2010.

**(I) The Prior Art Rejection**

- A. Claims 1-8, 10, 11, 20-23, 57, 58 and 64-82 are not anticipated by Hauser (U.S. 2006/0241027 (hereinafter referred to simply as "Hauser")).

Appellants respectfully submit that no claim is anticipated for the reasons submitted in the Appeal Brief submitted on 3 September 2010. Appellants maintain all arguments filed in the Appeal Brief. Consideration of these arguments is urged. Further, Appellants Reply to the Examiner's answer as follows:

The Examiner has correctly identified the crux of Appellants arguments that the Hauser provisional application (US 60/355,547) lacks written description support to the instant sequence claimed in the instant application. However, rather than review US 60/355,547 and point out where the support is found, the Examiner draws a timeline on page 7 of the Answer and brings an entirely new reference (USAPN 12/401241) into this case. Once again, the Examiner has erred by failing to review the Hauser Provisional Application and identifying support disclosing the instantly claimed invention. Conversely, the Examiner presents an argument that incorrectly presupposes that US 2009/0227775 is necessarily entitled to the earliest priority date because it claims T-1249. Again, nowhere does the Examiner review US 60/355,547, to show where the instantly claimed invention is disclosed. A review of this application shows that US 60/355,547 does not disclose a polypeptide sequence comprising

FIVSI within an albumin leader sequence fused to a protein. Further, the only disclosure of T-1249 is on page 86 of the priority application (see paragraph 2):

Additional antiretroviral agents include fusion inhibitors/gp41 binders. Fusion inhibitors/gp41 binders include T-20 (a peptide from residues 643-678 of the HIV gp41 transmembrane protein ectodomain which binds to gp41 in its resting state and prevents transformation to the fusogenic state; Trimeris) and T-1249 (a second-generation fusion inhibitor; Trimeris).

T-1249 refers to a fusion inhibitor and not the claimed invention.

The Provisional Hauser Application does not meet the written description requirements of the presently claimed invention and cannot be used to provide the critical reference date. The Examiner continues to fail to show where the subject matter relied upon by the Examiner in the rejection is located in the Hauser Provisional Application. This is true even after the Appellant provided a copy of the Provisional Hauser Application with the response to Final submitted by Appellant on 3 February 2010 and included the same arguments in the appeal brief.

For these reasons, Appellant asks that the rejection under 35 U.S.C. 102(e) be withdrawn and the Examiner's rejection reversed.

## **(II) CONCLUSION**

For the reasons set out in the Appeal Brief, and in this Reply, the rejections should be reversed and the claims allowed.

Appellant believes that no additional fee is due at this time. Should any additional fees be due, the Office is authorized to charge the deposit account of Novozymes North America, Inc., *i.e.*, Deposit Account No. 50-1701.

Respectfully submitted,

Date: February 22, 2011

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